أَطِيعُوا اللَّهَ وَأَطِيعُوا الرَّسُولَ وَأُولِي الْأَمْرِ مِنْكُمْ

DRAFT ISLAMIC CONSTITUTION OF PAKISTAN

Presented by

MAULANA MUHAMMAD ABDUSSATTAR KHAN NIAZI

M.A., Ex. M.P.A.

Published by

MAJLIS-I-TAAMIR-I-MILLAT, 42, MAIN GULBERG, LAHORE (PAKISTAN)

بِسۡمِ اللّٰہِ الرَّحۡمٰنِ الرَّحِیۡمِ

اطیعوا الله واطیعوا الرسول و أولی الامر منکم (القرآن)

Domination of Man over Man under Various Pretexts of Rationality can only be ended through Obedience to Divine Revelation. (Mufakkir)

DRAFT
Islamic Constitution for Pakistan

by

MUFAKKIR

Presented in 1952, by

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FOREWORD

So far not a single political party in Pakistan has defined in clear political terms as to what form of Government is suitable for Pakistan of which Islam unquestionably is the foundation stone. The resulting confusion is typified by such incongruous terminology as "Islamic Democracy" to be dominated in turn by "Islamic Socialism" etc. "Parliamentary Democracy" remains with a vast majority of the standard-bearers of the "Matriculate wisdom" as the cherished goal of the political struggle by the political parties. The Almighty Allah, however, in His Revealed Word, has used the nomenclature of Khilafat epitomising the principle of agency in sovereignty and trusteeship in wealth, as the form of Government which Muslims as standard-bearers of the divine order, are expected to establish on earth, to stop domination of man over man and economic exploitation of the weak. The Prophet of Islam (peace be on him), as the last direct recipient of Allah's final message for the guidance of human beings is Allah's Caliph (Viceroy) on earth. After him the ideal of Government for his followers was and continues to be Khilafat-un-ala Minhaj-i-Nabuwwat (caliphate on the pattern of prophethood). This concept of Government runs right from the Khilafat Rashida to the Omayyads, the Abbasids, the Fatimids and the Osmanlis. The Sultanates of Spain, India, Indonesia and Malaya and the Muslim rule in other parts of the world abided by this concept, namely agency in sovereignty and trusteeship in wealth.

It is an irony of fate that the Muslims of the sub-continent, who made unparalleled sacrifices and braved untold hardships, for the survival of the caliphate in the twenties of the present century, soon after the establishment of Pakistan, have cynically ignored the spirit of the Khilafat Movement and have actually carried out unholy compromises with alien political concepts and theories. This is a complete negation of the struggle of the successive generations of the Indian Muslims to establish the authority and sovereignty of Islam which in political parlance takes the form of Khilafat. They have fallen an easy prey to the nefarious designs of their enemies by adopting an apologetic attitude towards Islam. Islam in the present context has been reduced to being an adjective and an agent rather than being the principal and the sovereign.

We the members of the Tahrik-i-Khilafat-i-Pakistan, under the guidance and inspiration of Allama Iqbal, made the establishment of Khilafat-i-Pakistan as the cherished goal of our endeavours. In 1936 the Founder-President of the party, Maulvi Mohammad Ibrahim Ali Chishti, for the first time, published a

map delineating the geographical boundariesof the proposed Khilafat-i-Pakistan linking both the wings of Pakistan with a corridor. The map was published by him as the Secretary-General of the Inter-Collegiate Muslim Brotherhood. When the Muslim students of the Punjab started organising themselves politically on The platform of the Punjab Muslim Students Federation, the project was given a further fillip through the activities of the newly formed PMSF. For the first time it was from the platform of this organisation that the details of the Caliphate scheme were presented to the Constitution sub-Committee set up by the Working Committee of the All-India Muslim League. The scheme was personally presented by the convener of the Khilafat-i-Pakistan, Maulana Abdus Sattar Khan Niazi to the Quaid-i-Azam at his New Delhi residence in 1939. In March, 1940 on the occasion of the passing of the Lahore Resolution by the All-India Muslim League, the PMSF held the first Khilafat-i-Pakistan Conference indicating clearly the form of Government in the proposed state of Pakistan.

In 1941, with the appointment of the Pakistan Rural Propaganda Committee by the PMSF, the message of the Khilafat-i-Pakistan was taken deep into the hearts of the rural masses. As Secretary of the Committee, Maulana Abdus Sattar Khan Niazi undertook a whirlwind tour of the province to acquaint the masses with the importance of resurrecting Khilafat as an instrument of Government in the emerging state of Pakistan. In 1944, the Maulana moved a resolution at a session of the Council of All-India Muslim League held at New Delhi urging upon the Muslim Leaguers to practise Shariat Law in their individual life as well as prepare themselves for its collective enforcement. In 1945 Khilafat-i-Pakistan movement published a monumental book entitled "Pakistan Kia Hai, Aur Kaisay Baney Ga." This book not only explained the fundamentals behind the concept of Caliphate but also made a clarion call to the Indian Muslims to wage an unceasing revolutionary struggle to defeat the British-Brahmin designs.

In 1948 after the establishment of Pakistan, a full-fledged movement for the establishment of Khilafat was launched throughout the country. The movement brought out a weekly "Khilafat-i-Pakistan" to propagate its cause. Through the columns of new weekly and pamphleteering ruthless exposures of the Anglo-Mohammadan Ruling clique and "Capitalist Communists", Anglicised Babus and neo-Bania Brahmin classes were made to their great consternation.

In 1950 when through behind-the-curtain manipulations the then Prime Minister Liaquat Ali Khan also donned the mantle of the Presidentship of the Pakistan Muslim League, the Khilafat-i-Pakistan Movement challenged this

manifestation of dictatorial and fascist tendencies by holding a convention in Lahore which was attended by a large number of Old Muslim Leaguers, including H. S. Suhrawardy and Pir Sahib Manki Sharif. These deliberations resulted in the emergence of the All Pakistan Awami Muslim League of which Maulana Abdus Sattar Khan Niazi was elected as the General Secretary and Mr. H. S. Suhrawardy the President.

In 1951 on the occasion of the publication of the BPC report a complete draft of the Constitution of Khilafat-i-Pakistan was made public and circulated.

In 1953 a country-wide movement was launched for incorporation in the proposed constitution scheme by the ruling party six fundamental positive principles including (*i*) Supremacy of the Rule of Tauhid (2) Finality of the Authority of Risalat and (3) Delegation under the Doctrine of Caliphate. Besides this, three negative principles including (1) Prohibition of Firauniat (*i.e.* exploitation of power) (2) Prohibition of Qarooniat (*i.e.* exploitation of wealth) were also agitated upon.

The convener, Maulana Abdus Sattar Khan Niazi, thereupon, was arrested, by Martial Law and sentenced to death, while his colleagues and co-workers suffered long terms of detention. Later, however, the death sentence passed against the Maulana was commuted to life imprisonment.

On emergence from Jail, in 1955 following an order by the High Court consequent upon a Writ Petition, the Maulana undertook an extensive tour of the country to acquaint the people with the state of affairs in Pakistan. He was once again arrested and detained under Bengal Regulation.

In 1958 on the occasion of the holding of the so-called International Islamic Colloquium, the convener with the active support of his friends and the Ulama, made strenuous efforts to secure the exclusion of deviationists and deniers of the doctrine of Khatm-i-Nabuwwat, from addressing the international gathering. He also made it impossible for the so-called orientalists to attack the accepted fundamentals of Islam under the garb of the freedom of expression.

After the advent the first country-wide Martial Law in 1958, Maulana Niazi managed to address 22 public meetings in Lahore to boost up the sagging morale of the people. He was tried on charge of sedition but due to the grace of Allah no harm came to him.

In 1962 the Maulana presented from the patform of the National Democratic Front the scheme for the establishment of Khilafat in Pakistan as the surest guarantee against the disintegrating forces working in the country. But he was again hauled up by the custodians of law and order on charges of sedition etc. In the same year when the University students came out of their

classes to defend their academic rights, the Maulana, who had supported the student community, was arrested and tried on charges ranging from loot and dacoity to incendiarism. But Providence again came to his rescue and he was discharged by the cour of law.

In 1968 the Maulana made a forceful speech in Abbottabad in which he exposed the malpractices of the Ayub Administration. The speech which was a precursor of the country-wide mass movement against the dictatorial regime of Ayub leading to his eventual downfall. The Maulana was again arrested under orders of the District Magistrate, Hazara. But the Peshawar High Court accepting the Writ Petition held the order of his detention as illegal and void and ordered the release of the Maulana.

Pakistan at present is the only country in the world whose nationality is determined neither by territorial contiguity nor by linguistic and racial affinities of its citizens. It is solely and exclusively determined by the principles of Tauhid and Risalat commonly known as ideology of Pakistan. Therefore it is perfectly logical to conclude that neither secular parliamentary democracy nor socialism of any brand can form the basis of a constitutional scheme for Pakistan. In fact there is no proper substitute for Khilafat-un-ala Minhaj-i-Nabuwwat (calipahte on the pattern of prophethood). The vast masses of Islam in Pakistan in spite of deep frustrations suffered by them in the past will not be satisfied short of the establishment of Khilafat in the God-given State of Pakistan. Such terms as "Islamic bias", "Islamic colour", "Islamic values", "Islamic concepts", "Islamic principles", "Islamic socialism" and "Islamic democracy" etc. are anathema to the masses and contradiction in terms. Islam is sovereign, infallible, inevitable and final. Let us recognise this fundamental truth and shape our national policies in its light.

HAKIM MOHAMMAD ANWAR BABRI

97 Circular Road,
Lahore : 14th July, 1971.

PREFACE

Pakistan's need for an Islamic Constitution is not only ideological but also physical. Whereas other Muslim countries like Iran, Turkey and the various Arab States can afford, at least temporarily, to isolate their political, economic and social problems from Islam, without endangering the immediate security of their physical existence; the trouble with Pakistan is that to the extent it ignores Islam, its very existence is put in jeopardy. The reason is that Islam is the only stabilising force in the far and wide scattered territories of Pakistan and the only basis of our nationhood, which is sustained neither by geography, nor language, nor race. Pakistan was carved for nothing else, but in the name of Islam. The experience of the past seven years of Pakistan's existence conclusively proves that so far as the appeal of Islam is not responded to, provincialism, personal intrigue, and subversive social tendencies gain in strength.

If Pakistan succeeds in involving an Islamic Constitution, her example may very well prove a guide for the whole of Middle East.

Therefore, the requirement of a Draft Islamic Constitution is not only theoretical but also practical.

On the other hand, a considerable section of our educated classes and high officers sincerely believe that the slogan for Islamic Constitution is no more than a hypocritical make-believe of some 'mad mullas' to capture despotic power and exercise it in the form of Medieval tyranny. Spectres of civil wars and the Inquisition hover before sacred imaginations.

Another complication is that the present-day international opinion has not a very favourable impression of the historical role of Islam. The Western Democracies have memories of the Bloody Crusades of Salahuddin, the fanatical Pan-Islamic Movement, and the primitive Muslim revolts against Western influence in the last century. The Communist countries visualise Islam as they meet it in Bukhara, Turkistan and Sinkiang—a reactionary, anti-revolutionary tool in the hands of vested interests. India can hardly think of Islam without recollection of the destruction and loot wrongly associated with Mahmud of Ghazna's raids. Partition in the name of Islam is itself a standing grievance.

A third factor to be reckoned with is the sectarian enmities and rivalries within Islam. Some of the weaker groups naturally do not hesitate even in playing into the hands of powerful foreign foes.

In the circumstances the only hope for Pakistan is to think deep and aloud on the problem of an Islamic Constitution. It is only by giving expression to the basic urge, that necessary adjustments and compromises among the various schools of thought can be arrived at.

Recently there has been some talk of Controlled Democracy in Pakistan. But even a Controlled Democracy requires first a regular system of Democracy, then a controlling agency, and last but not the least some ideology inspiring the control.

No infallibility can be claimed for any human effort; even when it pertains to seeking Divine Guidance.

The one aim in presenting this humble sketch would be realised if those more qualified than the present writer are prevailed upon to attend to the subject and avoid this mistake. Perhaps it may also stimulate those who do not agree to formulate their objection more precisely.

MUFAKKIR

1st December 1954.

THEORY OF REALITY

INTRODUCTION

What is implied by the constitution of a state?

DEFINITION

"The constitution of a state consists of the codified general rules governing the creation, maintenance and working of the political, legislative, administrative and judicial institutions through which an independent human community inhabiting specific territories preserves and promotes its social existence by conscious effort."

HISTORICAL DEVELOPMENT

Within the span of recorded history it were the Greek City-States who for the first time made the State subject to recognised rules of custom and tradition, though the Egyptians, the Medes, the Chinese and the Hindus of ancient times must have done the same.

It was the Romans who for the first time used the word "constitution" in the sense of a body of laws. The idea of a written systematic collection of general principles to which the political, legislative, executive and judicial institutions must conform, is hardly three centuries old. This concept originated in England, who does not possess a written constitution even today.

No doubt, definite principles did determine fundamental social institutions in antiquity as well. It is their intellectual consciousness, legal expression, logical arrangement and publication in print which evolved with England's industrial progress, consequent reduction of human thought to artificial conceptual associations, the gradual spread of universal education and the invention of the printing press.

America's written constitution with a list of Human Rights started the new era of written constitutions. France followed with a number of written constitutions after the Revolution. Bismarck forged Germany's federal constitution. The formality spread, and has come to stay. So much so that today a state without a printed constitution shall be considered uncivilized.

BASIC VALUES OF A CONSTITUTION

Originally social institutions were founded on the basis of custom or creed. To avoid contradictions and ambiguities, it was gradually found

expedient to establish a mechanical conceptual Rule of Law. But the Rule of Law itself has so far meant no more than a codification of the current prejudices of the society. Only since about a century a tendency has developed to seek a deeper basis for the Rule of Law. The attempt, however, is so far at a very rudimentary stage.

Though it has produced a wealth of material inventions, yet the West European Empirical Civilization has miserably failed to discover any permanent super-rational values for whose sake the transitory biological existence may become worth while. The reason is simple. The only source of knowledge and judgement for this Machine Civilization is intellect (conceptual association thought). It is incapable of a synthetic approach to life. Its functional ideals never progress beyond craving "power" in the context of "Individual Enterprise," "Class Dictatorship", or "National Imperialism". Even Justice, Toleration and Brotherhood are sought within the limitations of inter-"nationalism". After all, intellect can only work on given values. It cannot discover or appreciate them. The result is that even today the whole structure of the Western Rule of Law is erected on foundations of prejudice, superstition, conjecture or doubtful hypotheses.

It has no access to the light of Revelation. It is not founded on a Shariat.

THE PROBLEM OF CONSTITUTIONS

The main concern of constitution-making continues to be the eternal problem of the creation, exercise and control of "authority"—physical, economic and moral. The dilemma is that human society cannot function and progress without authority, but once authority is created it is liable to be misused and turn irresponsible.

ANALYSIS OF A CONSTITUTION

Now-a-days a constitution usually begins with a list of fundamental rights. Then some basic principles are enunciated. Mostly the rights and the principles are mixed up. Then a more or less lengthy procession of the main clauses is laid out.

An analysis of constitutional authority reveals that, first of all, it implies the power to promulgate general rules of conduct—legislation. Secondly, it implies the authority to organise a machinery of official agencies to enforce these general rules—administration. Thirdly, it implies the authority to take particular decisions for enforcing these general rules—Executive. Fourthly,

it implies the authority to adjudicate all contentions whether a particular course of action violates or is in conformity with these general rules—Judiciary. Fifthly, it implies authority to collect money for enforcing these general rules—Taxation or Revenue. Sixthly, it implies the authority to enforce its mandates with physical force—Police and Military. Seventhly, it implies the authority to stimulate moral approval or disapproval for enforcing these general rules or the particular decisions adopted to enforce the same—Public Opinion.

Ability to take ultimate decisions in exercise of authority in all these seven spheres without subservience to any external influence, except the provisions of the constitution, makes a state sovereign.

The problem of citizenship together with the problem of franchise and the problem of sovereignty constitute the fundamental triple division of a constitution.

THE NECESSITY OF A CONSTITUTION

If a constitution is merely a conceptual reflection of a political reality which it is powerless by itself to create, or even maintain, the question arises why should Pakistan as a community of 'faith', 'hope' and 'effort' require a constitution of the Western pattern at all? Let the pagan victims of human thought bother about forging constitutions. Surely, an Islamic state can do without a printed constitution, as Islamic states have done for the last 13 centuries. The Scriptures are constitution enough for an Islamic state.

This attitude would have been acceptable if Pakistan had a sufficient number of citizens who could run the state on principles of faith and intuition without the help of conceptual institutions. The unfortunate fact has to be admitted that most of Pakistan's population capable of conscious effort is unable to live or work on faith alone. They have to be initiated into Islam through the intellect. Secondly, such an attitude is not possible on account of the fact that today Pakistan is the only Islamic state in the world, and is by no means the strongest. Avoidable international difficulties would be exaggerated if Pakistan goes without a constitution. Thirdly, though Islam ordains a synthetic approach to Reality, it is not averse to conceptual knowledge so long as it is kept subservient to Revelation.

Therefore, in the present circumstances Pakistan can only start on its march towards making itself an Islamic State if it consolidates its own itelligentsia and wins the sympathies of powerful world-forces by translating its ideals into a constitution which is within their understanding, even when they do not agree with it.

PECULIARITIES OF PAKISTAN'S CONSTITUTION

It has already been noted that state constitutions are only a recent innovation in man's long history. They concern themselves merely with conscious political activity—and even here solely with those aspects which can be measured and controlled by conceptual association. Evidently, the fundamental natural forces which determine the extent, duration and tempo of a state are too deep and gigantic for the grasp, much less manipulation, of the conceptual knowledge alone of any particular age. Thus the constitution of a state is directly based upon its imponderable values, flowing from the historical, metaphysical, ethical, epistemolgical, scientific and cultural properties of its people.

Pakistan may truly be described as a miracle product of the Two-Nation Theory in the twentieth century. This theory propounded a concept of stateship which is neither ethnological, nor linguistic, nor territorial (witness the Two Pakistans), nor economic, nor utilitarian (partition losses), but fundamentally ethical and spiritual. Islam presents the only true ideal of a Universal State of Humanity, not limited by any consideration of nationality, class or "cultural authority".

Most of the world today is fundamentally dominated by Anglo-American values. Even Russia, under West European influences, has succumbed to a myth of "Democracy", "Evolution", "Progress", "Science", "Economic Forces", and the "Eternal Logic of History". This is not the first time that humanity has been subjected to such nonsensical illusions. The domination of the Roman Empire resulted in similar worship of Greek syllogism, Latin Law, and the quest after "Glory". The fact is that philosophic, scientific or cultural "theories" never stand by themselves. It is when a people believes in them that they are looked upon as realities. They are the bye-products of a human society. They can never create or explain it. Every individual or nation judges or evaluates them from the angle of its own spiritual standards. The life of such beliefs and the area of their domination depends upon the prevailing circumstances as well as their inherent energy.

Looked at from this point of view, there are no "universal values", as is the vogue nowadays to advertise certain West European values like "Liberty", "Toleration", "Rationality", "Equality", and "General Interest". These are merely the values of the North Atlantic Civilization that has secured world domination during the last two hundred years or so, by the use of Fire-arms, the Steam Engine, the Internal Combustion Engine and the Electric Power. No value, theory or opinion has a context in isolation. It is integrated into the spiritual make-up of a people.

Thus the establishment of Pakistan was a revolutionary dissension from the twentieth century ruts of the spiritual traditions enveloping the Anglo-

Americans as well as Russia. It was the dawn of a different era, the beginning of a new World Civilization, the opening of a fresh age which shall have different theories of astronomy, history, geography, physics, mathematics, politics, logic, psychology and all other sciences. Pakistan shall not necessarily committed to any "truths" taught by the Anglo-Americans or the Soviet. She may accept their teachings where they conform to her own, but she will not concede *a priori* that there are any "Eternal truths" embodied in heathen, pagan, infidel, profane civilizations, as such.

To the extent that a constitution is a thought abstraction of the life-impulses, it is also a mirror of spiritual peculiarities and fluctuations. Even the countries which belong to the Anglo-American Bloc or *vice versa* have not had a constant constitutional conception for half a century. Far less does the constitution of one country resemble beyond appearance to the constitution of another country, although both may be dubbed as democracies or dictatorships. If ever there are any permanent features in the political constitution of a state, they may safely be taken as the lasting traits of its people.

Let then here a few current subjects of constitutional thought be picked up, and under each heading the peculiarities of Pakistan's constitution observed. The one character common to all these peculiarities is the pre-supposition of the direct intervention of Divine Agency into human affairs through the Angels, the Prophet and the Saints. Nature is not to be "controlled" by material science based on conceptual thought, but rather to be "realized" through obedience to Revelation.

1. Nationhood. Pakistan's nationality is a flat denial of all the material bonds today universally accepted in the pagan world race, territorial contiguity, language, economic unity, or historical integrity. The only basis of Pakistan's nationality is faith in Islam, belief in Allah, resolve to obey the last Prophet's Shariat, and a voluntary contract to associate with the State of Pakistan.

Whoever fulfils these conditions is a national of Pakistan even though he is not a resident—he can exercise his vote and has a claim to the State's protection. Whoever does not fulfil these conditions is not a national, even though he may be a citizen.

Thus Mussulmans in Iraq, China, Algeria or Russia may become nationals of Pakistan if they so declare. Geographical distance or numerical strength can be no hinderance—witness the distance between East and West Pakistan.

2. Statehood. Pakistan's theory of State is not based on territory, rather it relates to the human factor. Whatever comes under the control of a national, falls under the jurisdiction of the State, wherever the location may be. The

State may, therefore, extend beyond the frontiers of its main bulk. It is extra-territorial, potentially the whole universe is under its sway.

The Islamic State's relations with other states do not flow from any pseudo-moral theories of 'equality of nations'. Nations or the states established by them are not equal, nor they should be. It all depends upon who they are and how they behave. Their relations with Pakistan are determined by mutual agreement, or failing that by Islamic Law as far as it can be enforced.

3. Sovereignty. The prevailing conception of sovereignty implies the moral right and the physical capacity of an authority to enforce its mandates. Islam does not recognise any human agency sovereign in this sense.

No human authority has any moral right to enforce its mandate unless a majority of the nationals enjoying franchise agree that such a mandate is a necessary corollary of the teachings in Quran and Hadith and the mandate is also held valid in this sense by a competent court.

4. Legislation. According to Islam no man can lay down the law for any other man. Allah alone has the right to determine the aims of human existence. The last Prophet is the sole authority to prescribe laws for the faithful. The State itself as a human agency is subject to this Divine Law. The State machinery is authorised merely to discover, apply and follow these laws, the courts adjudicating whether a particular inference is correct and whether it is ordained by Quran and Hadith at all.

Both the State as well as the courts as interpreters of Shariat are subject to the precedents of the admitted Ulama and Aulia-Allah of the past. One of the functions of the Legislative Assembly of Pakistan will be to prepare the lists of the Ulama and Aulia who may be accepted as Salf-e-Saliheen, and also to codify their interpretations authoritatively.

5. Franchise. The measure of judgement in an Islamic State is its quality and not the quantity in the first instance. It is not the opinion of the many that prevails but the opinion of the pious (Muttaqi) and the wise (Aalam). Pious are those whose conduct conforms to that of the last Prophet. Wise are those who know the sciences of religion as well as the sciences of the world and have experience of dealing successfully with the affairs in question.

Thus the right of franchise does not depend merely on age but also on sex, education, experience, character and past record of private as well as public conduct.

6. Authority. Authority in Islam does not arise out of physical or economic superiority, or even out of the consensus of majority. Its sources are moral and spiritual measured in the same terms as described above with regard to franchise. In fact the qualifications for franchise mean the qualifica-

tions to determine the sources and mode of the creation and exercise of authority. Only he has the authority to rule over another or others, who is more pious and wise. Authority is divine and so it is only to be obeyed when it (*i*) sincerely avers to be divine, (*ii*) has formally been canonised by Ijmaa (Majority of the virtuous and the wise), a regular Fatwa (Consent and Affirmation) from a Mufti (Court of Law), and a Faisla (Enactment) from a Qazi (Court of Fact).

An authorised authority is condemned in the parable of the Pharaoh while usurped authority is censured in the tradition of Yazid.

7. **Property.** In Islam there is no right of irrational, limitless, absolute property not even in one's own person (none can sell himself for illicit purposes). The absolute owner is only Allah. All movable or immovable property vests in principle on His behalf in the laws of Shariat proclaimed by His Viceroy—the Last Prophet. The community is collectively a trustee on behalf of the Last Prophet.

So, no use of property is permissible which is against the Shariat of the Last Prophet. Thus what goes in Islam as the proprietary right is practically no more than the right of exchange, exhaustion, usure, or consumption of produce in a lifetime or as a heritage.

This right to use is graded in quantity, duration and form, according to elaborate laws. The restrictions are mostly against the different forms of multiplication by exploitation of humanity *e.g.* usury, interest, gambling, speculation, feudalism, capitalism, industrialism, communism, etc.

Absolute property is censured in the parable of Croesus.

8. **Knowledge and Reality.** Awareness (Knowledge) and Existence (Reality) are differentiated in Islam as Part and Whole, respectively. The reality in this Universe and Beyond exists in grades of eternity and significance. Allah alone being the Eternal, the Almighty and the Omnipotent.

Awareness, therefore, is limited in scope as well as duration. The link between the two worlds of Awareness (fleeting appearance), and Existence (abiding reality) is provided by Wahi (Revelation). Revelation is confined to the Prophet. Therefore, the ordinary mortal's sole connection with Existence is through Iman (Faith).

Though man cannot always perceive, and sometimes even conceive, all forms and periods of Existence, nevertheless man can, definitely or vaguely, according as his spiritual capacity permits, always feel it and believe in it.

There is only one criterion for the veracity of human beliefs, that is the teachings of the Last Prophet. What are the teachings of the Last Prophet can be learned from the Ulama and the Aulia Allah. Who are the Ulama and Aulia? They who conform more strictly to the teachings of the Last

Prophet and have learnt the same. Who conform to the Last Prophet's teachings and have learnt the same? Who are the Ulama, one has to judge by one's own standards of awareness; and who are the Aulia, one has to decide by the criteria of one's own feeling.

If our own knowledge and feeling mislead us, we can only correct them by Taaleem (Education), Tarbiat (Discipline), and Riazat (Concentration, experiment, exercise and research combined with prayer).

9. Judiciary. The qualifications of a judge in Islam include the measure of his private character and spiritual beliefs, besides the normal qualifications in religious as well as worldly education and experience.

The Western Civilization has lately learnt to differentiate between the Administrative and Judicial functions of the State machinery. But it has not yet learnt to divide the fact-finding and law-prescribing functions of the judiciary itself, though the difference between the judge and the jury is a primitive advance in this direction.

Islam prescribes complete division of functions not only between the administrative and judicial functions of the State but also between the two capacities of the judiciary as the fact-finder and the law interpreter.

The court which frames the issues (civil) or the charge (criminal), records the evidence and decides the facts is the Qazi. The court which in the particular contest of the facts declares the law is the Mufti.

10. Class. The Islamic conception of "class" is basically different from the one prevalent in a Western Godless state. Whereas in a modern state the only common denominator used for interrelating values of life is money (witness the "damages" for rape or libel), in Islam such a common denominator is provided by the conception of "Piety", measured in terms of conformity to the ideals and practice of the Last Prophet.

Therefore, the standard for determining "upper" and "lower" classes is virtue and sin rather than wealth and poverty. The "Virtuous" constitute the upper classes and "Sinners" belong to the lower classes.

Ideals of "class justice" and conflicting interests of the classes do not find any place in an Islamic state, simply because Islamic Society roots out the very existence of such classes. The desirable ideals connoted by these Western phrases are enforced in an Islamic State through the institutions working on the conception of "Sin" and "Virtue."

DRAFT CONSTITUTION OF THE PAKISTAN CALIPHATE

"EMANCIPATION OF HUMANITY FROM DOMINATION OF MAN OVER MAN UNDER PRETEXT OF RATIONALITY".

Pakistan, a paramount State based on eternal edicts of divine revolution.

Draft Constitution by Maulana Abdussatar Khan Niazi, M.A., ex-M.P.A. dated 3-1-1953.

The problem of the future constitution of Pakistan is of basic national importance. On the one hand it is a conscienious duty of every Pakistani to play his part in removing the shortcomings of the B.P.C's report, on the other hand this task cannot be fulfilled in a constructive spirit without offering concrete alternatives. Therefore, before recording my dissent, in principle as well as in detail, from the B.P.C. report, I herewith present in all humility my alternative draft for the basic principles on which the permanent constitution of Pakistan should be worked out in my opinion. This draft was conceived some three years back when I was acting as the Convener of the Muslim League Khilafat-i-Pakistan Group.

PREAMBLE

Article I. "Whereas the struggle for the establishment of the paramount State of Khilafat-i-Pakistan was primarily inspired by the ideal of acquiring a Homeland for Mussulmans in the Indian sub-continent, where life should be organised in keeping with the fundamentals of Faith, Knowledge, Virtuous Conduct, Equality and Universal Brotherhood as taught by Eternal Divine Revelation; and which should inaugurate a gradual world-revolution to liberate Humanity from prejudice, sin, petty racial or national limitations, and the Misery resulting from the domination of Man Over Man under various pretexts of Rationality;

"Whereas all authority vesting in this Constituent Assembly has been acquired in the name of Allah and His Last Apostle Muhammad (may peace and glory of Allah be upon him):

"Therefore, we, the Mussulmans, as Divine Agents in this land, do hereby give ourselves and accede to the following constitution :—

BASIC PRINCIPLES

Article II. "The interpretation and implementation of all the provisions of this constitution shall be subject to the following six positive and three negative basic constitutional principles of the Shariat of Islam;

The Six Positive Basic Principles :

1. **Supremacy of the Rule of Tauhid:**—"Allah is the supreme Creator, Owner, Ruler and Judge. Quran is His Final Word, therefore, the tenets of the Book shall be the First Source and Authority in all legislative, judicial, executive and administrative decisions of the State.

2. **Finality of the Authority of Resalat:**—"The Last Apostle is the latest sole direct recipient of Divine Authority in all aspects of Life. Therefore, his precepts, practice and traditions, after fixing the quality and degree of their authenticity, according to Hadith and Sunnah, shall be the Second Source in deciding all policies and actions of every organ and agency of the State.

3. **Delegation under Doctrine of Khilafat:**—"Man is merely a Trustee for all forms of Wealth (Ameen) and Deputy in all kinds of Authority (Naib), both individually as well as collectively, because all Ownership and Authority ultimately emanates, in fact and in right, from Divinity.

"The term combining both these concepts of Trusteeship (Amanat) and Deputyship (Niabat) is Khilafat (Agency).

"This notion of Khilafat sums up the essence of political, constitutional and juridical thought of Islam.

"That is why historically the proper name for the permanent traits of the Islamic system of Government and State is also Khilafat.

"Divinity bestowed Khilafat, as a general fact, on Humanity simultaneously with Genesis.

"Khilafat as a particular and definite constitutional or legal right in each community has been derived by every individual as well as by society as a whole through the Apostle of the time.

"The latest sole direct recipient of such Divine Delegation is the Last Apostle, whose jurisdiction will now last till eternity and cover the whole cosmos.

"After him the Khilafat passed on through him to the consensus of his Companions, because no Apostle was now ever to follow :

"The Majority, as a whole, of every subsequent generation of pious and learned Mussulmans has ever since, through their predecessors, acted as the recipient of this precious and sacred heritage till this day. The choice of peculiar institutions and individual persons by each generation was no more than a method adopted according to their circumstances, for the exercise of this everlasting privilege and responsibility of Khilafat in conducting the State.

"This doctrine narrated above, is technically called "the Doctrine of Conformity with the precedents of the Companions of the Last Apostle, the

Sages and the righteous Jurists of the past":

(Ittibaa-e-Suhaba wa-Aulia-wa-Salaf-e-Saliheen)

(اتباع صحابہ و اولیاء و سلف صالحین)

"Therefore, now whenever there is any difference of opinion regarding the connotation or denotation of a particular inference from the First and Second principles as enunciated above, the durable essence of the precedents, commentaries and interpretations of the Companions, Sages, Experts and Jurists of Islam in the past, as exponents of a consensus that even now forms a prior link in the chain through which the state today legally acquires its share of divine delegation, after they have been sifted and graded according to the fundamental rules of Fiqah, shall be followed as the Third Source and Authority in arriving at exact conclusions and verdicts.

4. **Decision by the Principle of Ijmaa:**—"All contemporary differences as to any particular inference or a final conclusion under the three former principles shall directly or indirectly be settled by a majority decision of those male nationals who qualify for the office of Sahibur-Rai (Voter) by conformity in their conduct to the habits of the Last Apostle and Acquisition of the requisite knowledge of essential sciences.

5. **Law of Decree by Fatwa:**—"All contentions as to the proper implementation of Ijmaa in definite instances shall finally be decided in questions of fact by competent courts of Qazies, and in questions of law by competent courts of Mufties, acting as an independent judiciary.

6. **Social Compact by Contract of Beiat:**—"All social, political, legal and administrative powers as well as responsibility shall be determined and enforced under an implied mutual, several and collective, contract (Beiat) of fidelity to the six positive and three negative basic principles of the constitution as enunciated herein, entered into at the time of registration as nationals of the State.

The Three Negative Basic Principles :

1. **Prohibition of Fironeyat (Shirk: Despotism):**—"Official powers, pretence of official power, or private power shall not be used to restrict the personal authority in any aspect of life of any individual or group of individuals except in pursuance of and in accordance with the provisions of the Constitution, or the laws of the State, or a legal contract freely entered into by the parties, a competent court of justice being the final judge of the propriety of the exact nature, amount and methods of force used in each case.

"All nationals of the State shall be justified and duty-bound, individually as well as collectively, in opposing prudently any human agency that may

indulge in despotic use of authority: provided the misuse is later established in a court of law.

"Quranic provision against "Shirk" and the allegory of the Pharaoh explains the implications of despotic authority."

2. **Prohibition of Qarooneyat (Zulm: Exploitation):**—"Public wealth, influence of public wealth or private wealth shall not be used to increase or decrease the value or utility of the wealth of any individual, nor to restrict the opportunity in any aspect of an individual for earning wealth, except in pursuance of and in accordance with the provisions of the Constitution, or the laws of the State, or a legal contract freely entered into by the parties, a competent court of justice being the final judge of the propriety of the nature, extent and methods of the financial transactions involved in each case.

"All nationals of the State shall be justified and duty-bound, individually as well as collectively in opposing prudently any human agency that may indulge in economic exploitation, provided the exploitation is later established in a court of law.

"Quranic provision against "Zulm" and the allegory of Croesus explains the implications of economic exploitation.

3. **Prohibition of Yazeedeyat (Talbis: Sanctimony):**—"Pretence of the terminology of Islam shall not be used to realise or promote un-Islamic opinions, interests and projects of persons, classes or groups, a competent court of justice being the final judge of the sincerity and propriety of the issues implied in each case.

"All nationals of the State shall be justified and duty-bound, individually as well as collectively, in opposing prudently any human agency that may indulge in sanctimonious exploitation of Islam, provided the hypocrisy is later established in a court of law.

Quranic condemnation of "Munafeqat", and the allegory of Yazeed explains the implication of using Islam as a cover for un-Islamic purposes."

FUNDAMENTAL RIGHTS

Article III. Every inhabitant of Pakistan shall have the following fundamental rights according and subject to the limitations of Shariat, and judiciable by the relevant court :—

(*a*) The Right of Life.

(*b*) The Right of a suitable Residence.

(*c*) The Right of proper Food.

(*d*) The Right of adequate Clothing.

(e) The Right of Health and Medical Aid.

(f) The Right of necessary Education.

(g) The Right to use Public Property (Railway, Post and Telegraph, Police, Roads, Rivers, etc.).

(h) The Right to participate in National Institutions (Vote, Army Services, etc.).

(i) The Right to Conviction :—

(i) of a National to believe anything which is not against Islam.

(ii) of a Resident to believe anything which is not against the integrity of the State.

(j) The Right to Expression (of what one rightfully believes).

(k) The Right to Organization (of what one can rightfully do).

(l) The Right to Property, including within limits of Shariat :—

(i) The Right to Acquire (Earning, Gift, Heritage, Exchange, Security).

(ii) The Right to Hold.

(iii) The Right to Exclude.

(iv) The Right to Use.

(v) The Right to Consume.

(vi) The Right to Transfer.

(vii) The Right to Pass on as Heritage.

(m) The Right to Act (behave in any legal manner).

(n) The Right to Defend (may abstain, restrain, injure, or destroy prudently to prevent any treatment derogatory to or corrupting):

(i) Virtue.

(ii) Life.

(iii) Reputation.

(iv) National Integrity (may abstain, restrain, injure or destroy as a judicious national should do).

(v) Property.

TERRITORIAL DIVISIONS AND ADMINISTRATIVE UNITS

Article IV. The basis of Administrative Division in Pakistan shall be the number of adult inhabitants and the territorial area sufficient for their residential as well as occupational requirements.

The females, children and other wards shall go with their male guardians in this calculation.

Up to a maximum of ten adult males shall constitute one Family. About a hundred families shall constitute a Tehsil. A hundred tehsils shall constitute a District. About a hundred districts shall constitute a Province. A suitable number of contiguous provinces shall constitute a Country. All the federated countries shall constitute the Khilafat-e-Pakistan.

In combining units, their linguistic, geographical and economic contiguity shall be the decisive factor.

Keeping in view the geographical factors, each administrative unit shall be allotted land sufficient to meet the residential and occupational requirements of its inhabitants.

A commission shall be set up to delineate the divisions.

CITIZENSHIP

Article V. All inhabitants of Pakistan shall be distributed into four categories :—

1. **National.**—Any adult who believes in Allah and the Last Prophet and solemnly agrees to abide by the constitution shall, on making a declaration to that effect, be entered at a Regstration Office as a national of Pakistan.

2. **Resident.**—Any adult inhabitant of Pakistan who does not declare his faith in Allah or the Last Prophet, but solemnly agrees to conform to the laws of the State shall, on making a declaration to that effect, be entered at a Registration Office as a resident in Pakistan.

3. **Ally.**—Any adult inhabitant of Pakistan who is neither a national nor a resident but entered Pakistan under terms of an express agreement with the State shall, on presenting reasonable proof to that effect at a Registration Office, be entered as an ally of Pakistan.

4. **Outlaw Alien.**—Any adult found in Pakistan who is neither a national, nor a resident, nor an ally shall be considered an outlaw alien.

Children and idiots shall belong to the category of their guardians, if without a guardian, they shall be entered as Pakistan's nationals.

FRANCHISE

Article VI: Clause (i). In all tehsils of Pakistan the Mosques and the Schools shall be organised in such a manner as to record at the Mosque each national's conformity to his Major Duties in Shariat (Faraiz) as well as any judicial declarations against him (Irtikaab-e-Kabair), and register his educational qualifications at the School.

Clause (*ii*). The staff of the mosques and the schools shall be appointed on the basis of competitive examinations including a scrutiny of their character. Their conditions of service shall ensure their independence on the analogy of judiciary's immunity at present.

Clause (*iii*). Every adult male national who comes up to the requisite standard of piety according to the record at the Masjid, and who is also qualified educationally according to the record at the Madrassa shall be registered as a Sahibur-Rai (Voter).

CREATION AND APPLICATION OF STATE AUTHORITY

Article VII: Clause (*i*). All existing political, legislative, administrative, secretarial, judicial, legal, municipal, educational, and other corporate institutions; whether federal, provincial or local; shall be replaced by the following five Main (Aiwanat-e-Khamsa) and two Auxiliary (Zimni Aiwanein) Chambers, established at each tehsil, district, province and country as also at the central Khilafat-e-Pakistan.

It shall be the duty of every organ of the State at every stage to comply with and enforce this Constitution. Any person shall have the right to apply to the relevant court in Pakistan to enforce any provision of this Constitution against any organ or agency of the State.

THE MAIN CHAMBERS

1. **The Administrative** Chamber (Aiwan-e-Siasat): To preserve and promote the State structure as such to conduct foreign relations : politicians, political thinkers and administrators shall be elected to this chamber.

2. The Legislative Chamber (Aiwan-e-Shariat) : To lay down rules in all fields according to Shariat : Ulama, Mushaikh, Judges, Lawyers and experts in drafting shall be elected to this chamber.

3. The Financial Chamber (Aiwan-e-Amanat) : To organise Agriculture, Industry, Commerce, Taxation, Building, Roads, Railways, Irrigation, Export, Import, Currency and deal with all other financial or economic problems : Engineers, Traders, Cultivators and Financial Experts shall be elected to this chamber.

4. The Educational Chamber (Aiwan-e-Fazilat) : To investigate, formulate and teach all the sciences : Teachers, Professors, Scientists, Poets, Engineers, Philosophers, Writers, Researchers and Inventors shall be elected to this chamber.

5. The Military and Health Chamber (Aiwan-e-Askariat) : To promote the health and organise the national manpower : Ḥakims, Jarrahs,

Doctors, Sugeons, Sportsmen, Military Thinkers, Generals and Military Experts shall be elected to this chamber.

THE AUXILIARY CHAMBERS

1. The Ladies' Chamber (Aiwan-e-Nisaeyat): Where all Muslim female adults of the area shall send their representatives.

2. The Residents' Chamber (Aiwan-e-Refaqat) : Where all female and male adult residents of the area, if any, shall send their representatives.

Clause (*ii*). The Auxiliary Chambers shall be free to carry out their decisions with the support of their voters and set up organisations for this purpose, where their actions do not violate any edict of the superior Main Chambers.

Clause (*iii*). The Auxiliary Chambers shall have authority to address the relevant Main Chamber for any recommendations that the Auxiliary Chambers may desire to forward.

Clause (*iv*). All contact between the Auxiliary and the Main Chambers shall only be through written correspondence.

Clause (*v*). A meeting of any Chamber (Aiwan) whether Main or Auxiliary at a particular administrative unit shall be called a Session (Aiwan-e-Khaas). A joint meeting of all the five Main Chambers (Aiwanat-e-Khamsa) at a particular administrative unit shall be called a House (Dewan-e-Aam).

Clause (*vi*). The strength of all the Main as well as Auxiliary Chambers at a particular administrative unit shall be uniform, between a maximum of twenty and a minimum of four members, the exact figure to be determined at the first election by a special commission appointed for the purpose and subsequently by the House concerned itself.

Clause (*vii*). Every larger chamber (Aiwan) and House (Dewan) shall, respectively, have authority to determine the jurisdiction of the Chambers and House under it subject to an appeal to the Judiciary; the criterion being that the larger unit shall limit the jurisdiction of the smaller unit only when the immediate or future interests of an area larger than that of the smaller unit are clearly involved.

Clause (*viii*). General policies or important issues shall be decided upon in the House while detailed plans for their implementation shall be worked out in the relevant Chamber, and actual execution carried on by the Amir, his cabine t and staff.

Clause (*ix*). All decisions whether at a Chamber or at a House shall be taken by a majority of the members present subject to a veto by the President if less than half the strength of members were present.

Clause (x). The House at every stage shall elect a President (Amir) who will continue to hold office during a term of election as long as he enjoys confidence of the majority in the House. The President shall choose a Chairman (Wazir) for each of the Chambers. The Chairman shall hold office at the pleasure of the President and shall jointly work as his cabinet, each being in charge of the portfolio connected with his Chamber. The President shall be the premier of his own cabinet and shall not hold any portfolio in particular.

Clause (xi). All Chambers at every stage shall be elected directly for five years by the voters (Ashaburrai) in the area, registered according to the conditions of franchise prescribed above : Provided that a majority of the voters in any area may at any time by a written representation to the judiciary dissolve any of the chambers of the whole House.

Clause (xii). Every Chamber and House shall hold at least one meeting in each quarter of a year. The President, the Chairman and the majority of members in any chamber or in the House, respectively, may requisition a meeting at any time. The agenda shall usually be issued by the staff of the President or the Chairman, but the majority may for sufficient reason get it issued through the judiciary.

Clause (xiii). Every candidate for membership of any chamber shall, three months before the election takes place, issue a manifesto describing how, if successful, he proposes to implement the provisions of Shariat.

Clause (xiv). All elections shall be declared at least six months before they actually take place, and shall be held under the supervision of the relevant Judiciary.

Clause (xv). Save for the Residents' Chambers, every Voter, while voting, shall make a solemn declaration that his choice does not arise out of any personal or worldly consideration but solely depends upon the candidate's merit in Shariat.

JUDICIARY

Article VIII. The Educational Chamber shall lay down the qualifications and the Legislative Chamber shall frame rules for conducting competitive examinations to recruit and train, separately, fact-finding and issue or charge-framing courts (Qazi), as well as law-interpreting courts (Mufti) at each administrative unit in suitable numbers, with necessary powers of Civil and Criminal jurisdictions, and on conditions of service ensuring the complete independence of their conscience in interpreting Shariat.

CIVIL AND CRIMINAL LAWS

Article IX. The Legislative Chamber shall at once prepare civil and criminal codes, laws of evidence and rules of procedure under the dictates of Shariat for the present-day requirements of society.

PERMANENT SERVICES

Article X. The Educational Chamber shall lay down the qualifications and the Legislative Chamber shall formulate rules for suitable cadres of permanent services. There shall be no difference of status or privilege as such between the permanent servants and the various private professions, occupations and trades except in so far as required by the nature of official duties.

A NOTE ON CONSOLIDATION OF RELATIONS BETWEEN THE FEDERATION AND PROVINCES.

(EAST AND WEST PAKISTAN'S SOLIDARITY)

The proceeding draft outline constitution does not specially discuss relations between the Federation and the Provinces. This is because the problem is more political than constitutional. The formal aspect of constitutional structure is in no way different in this aspect than say regarding relations between a Province and the Districts, or the District and tahsils. Therefore, it has been dealt with in the outline on the same plane. If it is not considered sufficient this shall only be because of the disturbing tendencies of certain political forces since partition. This is a serious and important question but it will be a mistake to seek a solution on the constitutional level.

Political problems can only be solved on the political level for which purpose the following suggestions are ventured:

1. Immediate imposition of nation-wide conscription. Free movement of territorial Army units across all the State. Each Regiment to mix up platoons from different provinces, on the lines of multi-communal military units during the British regime.

2. The constitution may be enforced gradually; first in tahsils and districts only, ignoring the present provincial set-up as far as physically possible. After five years the provinces may be re-established on more rational geographical, linguistic and economic considerations. The Federal constitution may be implemented at the same time.

3. The Tahsil and District boundaries may immediately be rectified on the lines proposed in the outline,

4. The cadres of permanent services may be regularised all over the State and lower grade officials may be exchanged among the various provinces on a very large scale.

5. Communications should be improved, travel encouraged and commerce established between the various geographical units of the State.

6. Urdu (incorporated with Quranic words) be made the official language with Arabic, Persian and Bengali, as Secondary Languages, and Pushto, Sindhi and Punjabi as Regional Languages. Dialects should be discouraged. Government may sponsor countrywide newspapers magazines, radio programmes, literature, fairs and celebrations.

COMMENTARY ON THE FIRST FIVE ARTICLES OF THE DRAFT ISLAMIC CONSTITUTION

Article I. The preamble brings out the following points :

(1) It links the future constitution of Pakistan with the struggle in the past for the establishment of Pakistan and thus ensures that the ideals which inspired the pioneers of the Pakistan Movement should never be ignored.

(2) By referring to the paramountcy of Pakistan it emphasises that the Pakistan Government shall not in any manner be subordinate to the British Crown, the British Commonwealth, the United Nations Organisation or any other alien agency.

(3) It expressly draws attention to Pakistan's International mission of establishing universal Brotherhood irrespective of Race or Geography.

(4) It also affirms Pakistan's duty of removing human misery in any part of the world.

(5) It explains that all pretexts of Rationality are at bottom the attempt of some individual, group, nation or an era to enforce its own will upon other human beings against their consent or interests, by one stratagem or another.

Article II. The clauses of this article narrate the essentials of the theory of Khilafat. If there is one word in the vocabulary of Islam which sums up its political, economic and juridical thought, it is Khilafat.

The Theory of Khilafat (in its triple aspect of restrictions on and definition of State authority, laying down the foundations of Islamic economy and State finance, and symbolising the framework of Islamic jurisprudence) presents the essence of Islamic constitutional theory which historically runs throughout the regimes of the first Four Caliphs, the Omayyad and Abbasid

Empires, the Sultanates in Central Asia and India, the Fatimid Caliphate of Egypt, the Islamic Kingdoms in Spain and the Turkish Empire.

The individual instances may in certain respects have fallen short of the ideal, just as no actual Democratic or Communist state has up to this day come up to its own ideal, but it can be truthfully urged that throughout Islamic history the theory of Khilafat as expounded here has been at the root of all Islamic States.

Article III. Fundamental Rights are one of the accepted devices in modern constitutions adopted to give effect to quite a large number of their provisions. The rights enumerated herein are self-explanatory.

The rest of the Articles are Self-explanatory.

(NOTE : The Draft of this Constitution was published in the *Civil and Military Gazette*, Lahore, on the 4th of January 1953 A.C.)

WHAT ARE THE ESSENTIAL AND FUNDAMENTAL VALUES OF ISLAM, AND HOW CAN THEY BE PUT INTO PRACTICE IN THE PRESENT TIME AND CIRCUMSTANCES?

INTRODUCTION

Before a description of the fundamental values of Islam is undertaken, it is necessary to make sure what exactly is meant by the terms: "Values" and "Islam".

When we talk of "Values", our description is confined to an "intellectual conception of a value". This is so because the European civilisation and culture under whose influence most of the world lives today, believes that Reality and Truth are primarily intellectual and conceptual entities. But even European scholars who have made a deep study of other cultures and civilizations in Human history (*e.g.* Spengler) concede that other cultures and other civilizations had different ideas about the nature of Reality and Truth.

It is all a question of emphasising certain aspects of human experience. Modern man is apt to exaggerate the importance and significance of his intellectual experiences and their utility. At other times and in other places man exaggerated his emotional experience. The result was mysticism. In still another context man is engrossed by his instinctive experience.

This is not the place to go into a detailed study of all the different meanings that can be given to the term "Values". But the little that I have said above, is sufficient to prove that the term "Values" can have more than one meaning depending upon the level and quality of the experience of those who are participating in the discussion.

Islam is "universal and eternal Divine Guidance for all creation in all aspects of Existence, Progress, Realization and Termination, and the achievements of human and non-human personalities through identifying themselves with this Guidance".

It is thus evident that the totality of Islam is more massive than Life, than Universe itself, because it includes the message and some significance of Divinity. Therefore, Islamic Values are too big to be described merely through language and under the limitations of the rational method of understanding.

Knowledge (علم) is only one of the methods, and a very inferior method from the point of view of Islam for appreciating Islamic values. The major methods are, firstly, piety (تقویٰ). It implies a controlled regime of Behaviour, Habits, Prayer and Self-control. The second major method is

Faith (ایمان). It implies submission of personal whims and flights of thought to conform with the Revealed Books and the practice of the Prophets. The third major method is Realisation (عرفان). It implies establishment of direct contact with Truth and Reality under the guidance of some initiated teacher.

What I have said above does not imply in the least that Islam cannot be described or understood through the rational method. I have been pointing out that the totality of Islam cannot be described and understood only through the rational method. The world of rational experience about which we talk through the written or spoken word is only a Tiny Province in the mighty Empire of Islam. But nevertheless it is there, and we can talk about it. In fact the present discourse will be confined to this aspect of Islam. If I have taken so long in the introductory remarks to explain the Islamic approach to the understanding of "Values" it was only to make audience and the readers conscious of what I am leaving out in today's discourse.

EQUALITY, BROTHERHOOD AND LIFE HEREAFTER

Now that our description of Islam is going to be confined to the rational method, it will be automatically limited to those values of Islam which are concerned with humanity. In this context the first principle of Islam is that man has been created to serve his Creator alone. Therefore, no man is to serve another man. No man is to dominate over another man. Man is brother unto man. The second principle is that all men are equal. If man is to serve man, if man is to be dominated by man, it is only in obedience to Divine Commandments. If man is to be below another man it is only because he violates the Command of his Creator. The third principle is that the criterion for judging all the values of this earthly life is their utility for the Life Hereafter. Material progress, Military conquests, National glory and Physical luxury are all illusions unless and until they are made subservient to man's career after Resurrection.

It is thus evident that modern nationalism and internationalism are the very antithesis of Islam. Islam believes in the universal brotherhood of man. State and Nationality are only instruments for establishing this universal brotherhood. They have no justification for existence if they do not serve this purpose.

HOW CAN ISLAMIC VALUES BE PRACTISED TODAY

Islamic values can be practised today by the establishment of an Islamic State which should be governed by the following six positive and three negative basic principles :—

SIX POSITIVE BASIC PRINCIPLES

1. The Quran shall be the first source and authorty in all legislative, judicial, executive, and administrative policies of the State.

2. The precepts, practice and traditions of the Last Apostle, after fixing the quality and degree of their authenticity according to Hadith and Sunnah, shall be the second source in all the decisions and the actions of every organ and agency of the State.

3. Whenever there is any difference of opinion regarding the connotation or denotation of a particular reference from the first and the second principle as enunciated above, the durable essence of the precendents, commentaries and interpretations of the companions of the Last Apostle, and the jurists of Islam in the past, as exponents of a concensus that even now forms a prior link in the chain through which the State today legally acquires its share of the delegation of Divine Authority after they have been sifted and graded according to the fundamental rules of Fiqh, shall be followed as the third source and authority in arriving at exact conclusions and verdicts.

4. All contemporary differences as to any particular inference or a final conclusion under the three former principles shall directly or indirectly be settled by a majority decision of those nationals who qualify for the office of Sahib-ur-Rai (voter) by conformity in their conduct to the habits of the Last Apostle and acquisition of the requisite knowledge and experience.

5. All contentions as to the proper implementation of the fourth principle as narrated above shall in definite instances be decided in questions of facts by competent courts of Qazies and in questions of law by competent Courts of Mufties acting as independent judiciary.

6. All social, political, legal and administrative powers as well as responsibility shall be determined and enforced under an implied, mutual, several and collective contract (Beiat) of fidelity to the six positive and three negative basic principles as enunciated herein.

THREE NEGATIVE BASIC PRINCIPLES

1. Official power, pretence of official power, or private power shall not be used to restrict the personal authority in any aspect of life of any individual or group of individuals except in pursuance of and in accordance with Law.

2. Public wealth, influence of public wealth or private wealth shall not be used to increase or decrease the value or utility of the wealth of any individual, nor to restrict the opportunity in any aspect of an individual for

earning wealth, except in accordance with the provisions of Law, or a legal contract freely entered into by the party.

3. Pretence of the terminology of Islam shall not be used to realise or promote un-Islamic opinions, interests and projects of persons, classes or groups.

ATTITUDE OF ISLAM TOWARDS COMMUNISM

1. The main difference of Islam with both Capitalism as well as Communism is that they consider the economic necessities of man as supremo. Islam takes notice of the fact that the material necessities of man are finally regulated by his moral convinctions.

2. Capitalism and Communism represent two extremes under one of which no restrictions are placed on the economic activities of man, and under the other no freedom at all is allowed to the individual. Islam restricts anti-social, anti-family and anti-morality economic tendencies whether of the individual, or of the group, or the Society, or the State itself.

3. In so far as Communism aspires to social justice, equality of opportunity, and proper recompense for labour, Islam, too, endorses these ideals.

4. In so far as Capitalism permits freedom of enterprise, encouragement of family relations by permitting distribution of heritage among heirs and protects individual initiative, Islam has no objection so long as the rights of others are not violated.

5. Islam permits economic classes if they are founded on the economic talent and skill of their members after providing them equal education and opportunity. But at the same time Islam holds the "Haves" as socially responsible for providing a minimum livelihood to the "Have-nots" provided their hardship is not the result of wilful neglect.

(*Paper read in the Islamic Symposium at Dacca in July*, 1955).